Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

REPLY COMMENTS OF SENSUS USA INC.

Pursuant to Section 1.405 of the Commission's Rules, Sensus USA Inc. hereby files its reply comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding.[1]

Sensus is a leading manufacturer of smart-grid equipment used by electric, natural gas and water utilities under the trademark of FlexNet. Sensus' FlexNet equipment employs machine to machine communications. Sensus opposes the NPRM's proposal to subject machine to machine communications to universal service assessments. *See* NPRM para. 87. Sensus does so for two reasons: it would not serve the public interest; and the Commission lacks legal authority. The public interest would not be served because the Commission should not utilize cross-subsidies from the electric grid or unrelated telecom services to fund USF. The Commission lacks legal authority because machine to machine communications do not qualify as telecommunications and the NPRM's reliance on *Vonage* as authority to assess an information service is misplaced.

[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69, 2012 WL 982738 (rel. Mar. 12, 2012)(*Notice*).

1. THE PUBLIC INTEREST WOULD NOT BE SERVED

a. Electric Grid Should Not Be Taxed To Subsidize Telecom Network

Sensus' equipment assists utilities in performing smart-grid functions such as early warning of load imbalances and detection of outages, including the location of the outage. Such smart devices help utilities manage and extend the life of aging critical infrastructure that often is stretched beyond its capacity. Deployment and use of smart-grid devices and systems has been a priority of the Administration and Congress to better manage and preserve critical infrastructure such as the electric grid, and natural gas and water distribution systems. Funding under the American Recovery and Reinvestment Act of 2009 (ARRA) has spurred utilities' use of smart-grid equipment. The public interest would not be served by imposing universal service fund (USF) assessments on critical infrastructure, thereby negating some of the financial stimulus of the ARRA.

b. The Commission Should Not Revert To Cross-Subsidy Among Telecom Services

In proposing to assess machine to machine, and other forms of communication that are wholly unrelated to universal service mandates, the NPRM seeks to re-institute a regime of cross-subsidization between telecom services. Administrations, Congress, the Commission, courts and the telecommunications industry have taken years to undo telecommunications cross-subsidy. The Commission should not turn back the clock.

Although the mandate for universal service programs has expanded recently and the revenue base of the universal service fund is shrinking due to migration to IP based services, none of this has anything to do with machine to machine communications. Machine to machine is not part of, nor does it substitute for, the POTS (plain old telephone service) or the broadband services that are mandated to be provided under

universal service programs. Nevertheless, in its wide-ranging search for a revenue base, the NPRM proposes that one service (machine to machine) should subsidize another (retail broadband). This is contrary to the intent of Congress as expressed in the Telecommunications Act of 1996, which sought to eliminate cross-subsidy.

2. THE COMMISSION LACKS LEGAL AUTHORITY

a. Machine to Machine Does Not Satisfy The Definition of Interstate Telecommunications

Like most other manufacturers of machine to machine devices, Sensus programs its equipment at the factory or upon installation. The customer (a utility) or the putative end-user (a residence or business) does not control the form or content of the transmission, where it gets transmitted or when the transmission occurs. It is not the case that there is "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." *See* 47 U.S.C. 153(50). Consequently, machine to machine communications do not constitute "telecommunications," which is a requirement under Section 254 for the assessment of USF obligations. 47 USC 254(d).

Similarly, most utilities operate entirely within a single state, and the multi-state utilities are subject to a series of single state jurisdictions. Therefore, the signals sent by Sensus' equipment tend to stay within a single state and do not qualify as interstate.

b. NPRM's Reliance on *Vonage* Is Misplaced

The NPRM relies on the D.C. Circuit decision of *Vonage Holdings v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007) for key parts of its analysis, including that all integrated information services automatically include "telecommunications" in the transmission. *See* NPRM n. 111, 198 and text. The NPRM places undue reliance on *Vonage* because

that decision considered a *de facto* telecommunications service and does not constitute a precedent where the courts approved USF assessment on a true information service.

In its REPORT TO CONGRESS, submitted in 1998, and in other orders, the Commission had classified phone-to-phone IP telephony as a telecommunications service. This ruling would have brought Vonage's voice over Internet protocol (VoIP) under the mandatory portion of 47 USC 254(d) if VoIP were formally classified as a common carrier service. In a *deregulatory* thrust, in order to avoid subjecting Vonage to Title II common carrier regulation, the Commission deferred a decision of whether to classify VoIP as a telecommunications service or an information service. The Commission then proceeded on the universal service front under the permissive portion of Section 254(d). *See Vonage*, 493 F.3d at 1236. Vonage's VoIP clearly substituted for wireline toll service (a core USF-supported service), and the Commission had already ruled that phone-to-phone IP service constituted "telecommunications service," which would have subjected it to USF irrespective of whether the Commission had proceeded under the mandatory or the permissive portion of Section 254. Therefore, the D.C. Circuit readily concluded that the Commission had authority to assess Vonage.

In *Vonage*, the D.C. Circuit did not consider whether an integrated information service, like machine to machine communications, that is unlike any service supported by universal service programs, should be subject to USF assessment. The NPRM over-reaches by citing *Vonage* to expand USF to new services that (1) do not substitute for USF-supported services, or (2) do not qualify as *de facto* telecommunications services. The Commission's long-standing precedent has been that "information services do not

constitute 'telecommunications' within the meaning of the 1996 Act."[2] *Vonage*, which reviewed a *de facto* telecommunications service, does not overrule that precedent.

In conclusion, it is axiomatic that if one wants less of something, one should tax it. The Commission should not discourage machine to machine applications like smart grid devices and networks manufactured by Sensus by assessing USF fees. Instead, this activity should be encouraged in order to help alleviate stress on critical infrastructure.

RESPECTFULLY SUBMITTED

By: 

George Uram
Vice President,
Industry & Regulatory Affairs
Sensus USA Inc.
717 Ivy Street
Pittsburgh, PA 15232
(724) 425-7956

Julian Gehman
Gehman Law PLLC
910 17th Street NW, Ste 800
Washington, DC 20006
(202) 223-1177

Counsel to Sensus USA Inc.

DATED: August 6, 2012

---

[2] REPORT TO CONGRESS, *supra, n2,* 13 FCC Rcd 11501, 11517, quoting *Telecommunications Carriers' Use of CPNI,* Report and Order and Further Notice of Proposed Rulemaking, CC Docket No 96-115, FCC 98-27 (rel. Feb 26, 1998) at para. 46.